

## BDP Position

### On Community Seed Legislation

#### The Current Seed Legislation Ensures Breeding Progress and Sustainability

As early as the 1960ies, legal requirements for the production and marketing of seeds and planting material (hereinafter jointly referred to as "seeds") have been instituted, the aim being increased seed quality and improved diversity of varieties and plants. The continuous generation and enhancement of new genetic diversity and the broad selection of varieties can be put down to the the well-established system of European seed law and its achievements.

**If the European Union is to attain the policy objectives of the European Green Deal and its accompanying strategies, in particular those of the Farm-to-Fork and Biodiversity Strategy<sup>i</sup>, the current European seed legislation is the key. Plant breeders have always been working on the development of new innovative varieties with increased resistance to plant pests and diseases as well as to biotic and abiotic stress, of varieties with an improved carbon footprint, higher yields, improved nutrient efficiency, higher protein content, lower nitrogen demand, increased water use efficiency and many other traits that make for more sustainable agricultural practices. This means that the plant breeders' innovations have been oriented towards the ecological and future-oriented requirements of a more sustainable agriculture for decades, the ultimate aim being a secure supply of high-quality food and feed in sufficient quantity for a steadily growing society, in particular in the face of climate change challenges. In Germany, numerous research projects that received public appraisal and funding from the Federal Government can testify to this long-term commitment.<sup>ii</sup>**

**Against this background, BDP welcomes the fact that the EU Commission acknowledges the tried and tested principles of European seed law and that the EU Commission wants to harmonise them across all Member States of the European Union.**

#### Preserve the tried and tested examination system

Variety registration and seed certification are the two main pillars of European seed legislation; in their combination, they ensure that only high-quality seed is on the market. For this reason, compulsory official examinations will continue to be necessary.

The official examination of varieties and seeds is in the best interest of the farmer and the consumer. Seed usually looks very similar to the eye. It is not possible to discern whether it belongs to a high-yielding and resistant variety that requires little fertiliser and pesticides or, for example, whether it has a good germination rate. However, these criteria are of crucial importance, especially for the farmer (in view of yield security) and for the society (in view of food security and safety). If untested sub-standard seed is purchased and cultivated, this can entail considerable economic damage in the form of reduced yields and inefficient use of scarce finite resources (e. g. soil, water, nutrients, fuel consumption of vehicles used for sowing and harvesting, etc.). In addition, the cultivation of untested low-quality seeds is bound to result in the use of excessive amounts of fertilisers and plant protection products as well as, via the environmental media soil, water and air, in a massive proliferation of undesirable plant diseases and plant pests, in particular of dangerous seed-borne and soil-borne harmful organisms.

To prevent this, careful examination is a must – of the varieties in the form of variety registration, and of the seeds in the form of seed certification as an official neutral and multi-stage examination

process prior to marketing. Such an examination system is based on objective criteria and scientific principles.

Within the framework of the established variety registration procedure, the genetic identity of the varieties and their value for cultivation and use (VCU) are tested with reference to various crop-specific characteristics. Variety registration consists in the variety examination as such, in which the variety is described and tested for distinctness, uniformity and stability (hence: "DUS test"), and in the so-called VCU test, in which the value for cultivation and use is determined in a standardised way from the sum of all value-determining characteristics of each agricultural species used for food or feed production. The test criteria for determination of the value for cultivation and use will always be based on the current state of plant breeding, scientific and technological development. The requirements of farmers, processors and consumers should also continue to be taken into account.

Since vegetable varieties, ornamental plants and turf grasses do not count as agricultural species, they should, as in the past, not to be subject to VCU examination requirements.

Seed certification examines the physical condition of the seeds of agricultural species for their purity, germination capacity and stable health before the seeds are placed on the market. In particular, compliance with phytosanitary standards is an essential part of seed certification in order to detect dangerous seed quality issues at an early stage and to prevent the massive impact on yields and the potential spread of plant diseases and pests, especially of seed and soil-borne harmful organisms. Therefore, it is essential that phytosanitary principles continue to apply in the future. For vegetable varieties, the authorisation without official testing has proven its worth over the years; this practice should therefore remain in place even after a possible revision of the European seed legislation.

### **For decades, sustainability has been an integral part of plant breeding**

In most Member States, and especially in Germany, the compulsory official variety registration scheme restricts the access to the European market to those innovative and improved varieties that feature an increased value for cultivation and use. The legitimacy of such a restriction resides in the crucial importance improved varieties have for a more sustainable agriculture and for meeting future challenges related to climate change and the demand for greater resource efficiency. European seed law thus makes a significant contribution both to consumer protection and to a more environment-friendly production of agricultural goods.

The strategies of the European Green Deal particularly focus on increasing biodiversity and sustainability in the light of the need for adaptation to climate change, so that socio-political discussions and developments are increasingly shaped by these topics and will continue to be so in the future. Today, the aspect of sustainability is extensively taken into account in form of the criteria determining the value for cultivation and use in the crop-specific VCU examinations. The varieties are measured and evaluated against the objectives of a more sustainable agriculture on the basis of the long-term experience of the competent national and regional authorities involved in the official registration and recommendation of plant varieties in the various Member States. Varieties are tested, for example, for their resistance to biotic and abiotic stresses as well as for yield security and resource efficiency. It is necessary that these test criteria continue to be adapted to future developments and that they will take into account new breeding objectives and new technological, scientific and socio-political requirements. The VCU examination is thus the central yardstick for measuring the sustainability of the varieties developed by plant breeding. If a new category of so-called "sustainability criteria" were to be introduced by the legislation, the guiding principle would need to be that the evaluation criterion can be clearly measured and can be reproduced and verified on the basis of scientific data. Any legal obligation to evaluate against soft criteria (as e. g. efficient water or nutrient uptake) or a regulation of market access on the basis of criteria linked to objectives that lack a clear definition (as e. g. promotion of biodiversity or climate protection) would result in

legal uncertainty, would seriously complicate the process and significantly increase costs. Comparability and transparency would be reduced, which runs counter to the interests of the users.

### **Preserve national/regional VCU examination as an asset of the current system**

Furthermore, it is important to leave the examination of the value for cultivation and use within the competence and responsibility of the national and regional authorities in charge of variety registration and recommendation. The agro-climatic conditions in the Member States of the European Union differ to such an extent that the assessment criteria for the value for cultivation and use can most effectively be determined at national or regional level, and this is also where they can best be tested. Due to their expertise and many years of experience, it is the Member States and their authorities which are best placed to implement the seed legislation with the required flexibility by quickly and effectively assessing which criteria are to be used as a basis for the value assessment.

The individual requirements of the Member States for production and marketing make it considerably more difficult to create a uniform added value in the sense of a harmonised European VCU examination scheme. Economic considerations are also part of the reason why BDP is in favour of the preservation of the national or regional VCU examination system.

### **Uphold the principles of plant variety protection („one key, several doors“)**

Moreover, the principles of plant variety protection must not be restricted by the revision of European seed law. In particular, the validity of the DUS test reports as a basis both for variety registration and for the application procedure for plant variety protection must continue to be guaranteed. In the view of BDP, it is imperative that the principle of "one key, several doors" remain in place unchanged.

### **Ensure equal opportunities and fair competition**

The clear legal regulations for market access in the current European seed law ensure equal opportunities for all competitors in the European market. These are inherent success factors of the European seed law that particularly distinguish the European system in comparison to other systems outside Europe. The compulsory official variety registration procedure – a procedure whose objective test criteria are based on scientific principles – provides farmers with a neutral reference point for their decision making when purchasing seed. The respective crop-specific requirements and the adaptation of new varieties to climate change are taken into account. As a result, it is not the size of a company that determines its success, but its innovation and quality in breeding.

The preservation of the established official – i. e. independent – examination of plant varieties and seeds in form of a uniformly binding legal basis creates Europe-wide confidence in seed quality and harmonised market access throughout Europe, which in turn provides the basis for equal opportunities and fair competition. Not least has this led to the fact that there are still numerous small and medium-sized plant breeders in Germany and Europe who work on a large number of crop varieties. This is why it should continue to be ensured that competition is not jeopardised by earmarked fee regulations, nor that such practices impede the selection of plant varieties and crop diversity. The fact that Member States can pass more stringent national regulations contributes to a high quality level. This flexibility needs to be preserved.

### **Preserve and promote diversity of plant varieties, plant genetic resources and biodiversity**

As only improved varieties will be registered, the breeder has to innovate every year to create new varieties with increased value for cultivation and use. This promotes an enormous diversity of varieties and ensures the conservation of plant genetic resources. In Germany alone, there are now

over 3,500 tested varieties, and in Europe, there are in total well over 46,000 varieties. In addition, breeding activities in Germany are carried out on no less than 115 crop varieties. This shows that the current system ensures that for a large number of crop species improved varieties are available, and this constitutes an important contribution to biodiversity.

### **Exemptions and simplifications only if legitimate and controlled**

The current European seed legislation has provided farmers with a wide choice of varieties and with the freedom to decide in which varieties to invest. The majority of farmers (including organic farmers) choose to use the latest varieties because they value their improved characteristics, but under certain conditions old varieties (conservation varieties) may also continue to be sold and cultivated. Under the European Directive 2008/62/EC on the acceptance of conservation varieties of agricultural species and its implementation into national law (the German Conservation Variety Regulation), minimised requirements apply with regard to the conditions for their acceptance. A revision of the European seed law must not further simplify such exemptions or weaken the conditions. Under Directive 2009/145/EC on the acceptance of conservation and amateur varieties of vegetable species, these simplifications cover both old vegetable varieties accepted for conservation purposes (conservation varieties) and old as well as newly bred vegetable varieties which have no inherent value for cultivation for commercial purposes (amateur varieties). This directive has also been transposed into national law in form of an amendment to the German Conservation Variety Regulation.

In addition, further simplifications can be found in the European Directive 2010/60/EU on the marketing of fodder plant seed mixtures intended for use in the preservation of the natural environment. This directive has been duly transposed in Germany into a national regulation (German Conservation Mixture Regulation).

Furthermore, the delegated acts to the European Organic Farming Regulation (EU) 848/2018, which has entered into force in January 2022, regulate derogations for heterogeneous material that are completely incompatible with the DUS examination for plant variety registration; consequently heterogeneous material cannot be accepted as a plant variety. The delegated act on in-conversion material (EU) 2021/1794 allows the marketing of heterogeneous material beginning from the year 2022 provided the plant propagating material has been produced under organic conditions during a conversion period of at least twelve months. According to the Delegated Act (EU) 2021/1189, organic heterogeneous plant reproductive material only has to meet the minimum requirements for seed quality, identity, technical purity, germination and health prior to marketing. Hereby, the seed sector is already giving significant leeway for the handling of heterogeneous material, which, contrary to the principle of homogeneity of varieties, may nevertheless be marketed in selected exceptional cases.

Consequently, a large number of derogations and simplifications are already available today. This provides selected niche products with legitimacy to access the European market without having to go through the complete testing system of the established European seed legislation.

Against this background, particular attention should be paid to the fact that exemptions and simplifications from the basic variety protection and seed marketing regulations for registration and certification have a large potential for abuse. As a result, this can lead both to a reduction in the innovative strength of plant breeding and to a distortion of competition and to considerable economic damage for the farmer. Therefore, exceptions and simplifications must be strictly defined and precisely regulated in order to ensure successful implementation and reliable control. This is the only way to ensure the genetic identity of the varieties, the physical condition of the seed, the quality and quantity as well as the health status of the seeds.

BDP is strictly opposed to any further liberalisation of the European seed market.

## **Need for a clear separation of the professional and non-professional sector**

In order to ensure equal treatment of all market participants in the future, BDP continues to advocate a clear separation of the marketing regulations for the professional and non-professional sectors. To this end, BDP calls for a precise and unambiguous definition of the "professional sector", which should be based on the German definition of "marketing for commercial purposes" in § 2 I (12) German Seed Marketing Act. According to this definition, the activities of offering, holding in stock for distribution and for sale as well as any sales to others in the setting of a registered trade activity or otherwise for commercial purposes are classified as commercial. Based on this definition, it is also easily possible to qualify cases such as trade by non-profit seed organisations, the area of digital trade (online trade) and digital exchange as commercial (professional) or non-commercial (non-professional).

Only a clear definition of the professional sector can ensure that there is an unequivocal demarcation between the sectors and that the non-professional sector is adequately delimited. This will ensure the protection of the farmer as a seed consumer through the supply of high quality seed. It also ensures that the professional seed market is not affected and that competition is not distorted by the excessive creation of uncontrolled niche markets.

Therefore, it is imperative that in the future, any professional provision or distribution of seeds continues to be subject to the provisions of the seed marketing law.

As in the past, the non-professional provision or supply of seed should not be covered by these provisions, irrespective of whether the provision or supply is made against a payment or free of charge. The private cultivation and exchange of seed for non-professional purposes thus remains permitted.

In contrast, the exchange of seed between farmers – i. e. for professional purposes – must continue to be prohibited in order to protect farmers as seed consumers and to ensure the supply of high-quality seed to agriculture.

## **Promotion of biotechnological and digital developments**

The progress and implementation of the latest biotechnological and digital developments in plant breeding should be promoted in order to speed up bureaucratic procedures, to increase quality and to reduce costs by reducing the administrative burden.

In the light of digitalisation and the targeted 25 % of organic farming across EU by 2030, BDP advocates the establishment of a suitable system for EU-wide recording and documentation of crop-specific propagation and cultivation areas for organic seeds. The quantities of organic seeds sold in each case should also be recorded. Proper recording and documentation of the data ultimately forms the basis for precise monitoring of the achievement of political goals. However, this requires upfront financial support for the equipment of all national authorities with equivalent technical standards in all Member States.

In addition, the DUS examination as the centerpiece of the variety description and of all subsequent control measures verifying the variety identity should be continuously adapted to technological progress. The approach taken should be compatible with the requirements of the International Union for the Protection of New Varieties of Plants (UPOV). The implementation of technological progress also needs to be ensured in seed certification, especially as regards field inspections.



## The current system as a cornerstone for continued joint target achievement

**BDP requests that the tried and tested principles of European seed law be maintained in the future to enable plant breeding to further contribute to the European goals of environmental protection and biodiversity. In particular, the objective of increased sustainability in plant breeding can only be ensured if scientific knowledge and its application in practice will be promoted. Any further procedural complications must be avoided under all circumstances, and the seed-legislation related procedural costs must not be disproportionately increased.**

**Only by maintaining the existing principles can high-quality seed be produced and thus the yield security of farmers as well as the supply and food security for the society be preserved. A modernisation of European seed legislation should therefore focus on a better understanding of the legal provisions and on increasing procedural and cost efficiency.**

Bonn, 23. March 2022

### Contact:

Bundesverband Deutscher Pflanzzüchter e. V. (BDP)  
Dr. Anja Dederichs  
Head of Department, in charge of Seed Legislation

Kaufmannstraße 71-73, 53115 Bonn, GERMANY  
**Phone:** +49 (0) 228 / 9 85 81-288  
**Telefax:** +49 (0) 228 / 9 85 81-19  
**E-Mail:** [anja.dederichs@bdp-online.de](mailto:anja.dederichs@bdp-online.de)  
**Homepage:** [www.bdp-online.de](http://www.bdp-online.de); [www.diepflanzenzuechter.de](http://www.diepflanzenzuechter.de)  
**Facebook:** [www.facebook.com/diepflanzenzuechter.de](https://www.facebook.com/diepflanzenzuechter.de)  
**Twitter:** [www.twitter.com/DialogBDP](https://www.twitter.com/DialogBDP)  
**Instagram:** <https://www.instagram.com/diepflanzenzuechter/>

### Contact:

Bundesverband Deutscher Pflanzzüchter e. V. (BDP)  
Dr. Carl-Stephan Schäfer  
General Manager

Kaufmannstraße 71-73, 53115 Bonn, GERMANY  
**Phone:** +49 (0) 228 / 9 85 81-11  
**Telefax:** +49 (0) 228 / 9 85 81-19  
**E-Mail:** [carl-stephan.schaefer@bdp-online.de](mailto:carl-stephan.schaefer@bdp-online.de)  
**Homepage:** [www.bdp-online.de](http://www.bdp-online.de); [www.diepflanzenzuechter.de](http://www.diepflanzenzuechter.de)  
**Facebook:** [www.facebook.com/diepflanzenzuechter.de](https://www.facebook.com/diepflanzenzuechter.de)  
**Twitter:** [www.twitter.com/DialogBDP](https://www.twitter.com/DialogBDP)  
**Instagram:** <https://www.instagram.com/diepflanzenzuechter/>

---

<sup>i</sup> The socio-economic and environmental values of plant breeding in the EU and for selected EU member states by Steffen Noleppa, Matti Carlsburg

<sup>ii</sup> Examples of research projects for enhanced plant resistance receiving public funding (cf. Table Plant research since 1966)